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MISCELLANY.

COURT OF APPEALS AT STAUNTON.—

Number of cases on docket.....	39
Removed to Richmond.....	1
Continued because not ready.....	11
Continued because not reached on docket.....	2
Dismissed.....	2
Final judgments or decrees.....	23
	39

RELEASE OF SURETY.—A learned subscriber sends us the following epitomized statement of the law governing the release of sureties by indulgence to the principal. We question the soundness of proposition 3. It should be confined to extension *after action brought*. 2 Daniel, Neg. Instr. 1319:

"The settled view of the courts and the text writers, without dissent, justify the statement of the law to be that the following indispensable requisites must coexist in order to entitle a surety to be released by reason of the indulgence of the principal by the creditor.

1. The time of payment must be extended—Story, Prom. Notes, sec. 413.
2. For a definite period—*Bacon v. Bacon*, 94 Va. 686, 691; Brandt, Suretyship, sec. 344, *et seq.*; 2 Daniel, Neg. Instr., sec. 1315, *et seq.*
3. To expire after the date at which a judgment could be obtained—Brandt, Suretyship, sec. 368, *et seq.*
4. Without the consent of the surety—*Hunter v. Jett*, 4 Rand. 104.
5. And without reserving his rights—*Exchange v. Bayless*, 91 Va. 134, 141.
6. By a binding agreement—2 Daniel, Neg. Instr., sec. 1316, *et seq.*
7. Between the creditor and the principal—*White v. Hopkins*, 3 W. & S. 99; 37 Am. Dec. 542; 2 Daniel, Neg. Instr., sec. 1307, *et seq.*
8. By the voluntary act of the creditor—*Fertig v. Bartlett*, 78 Fed. 866; *Tierman v. Woodruff*, 5 McLean, 350; *Phillips v. Solomon*, 42 Ga. 192.
9. To give indulgence to the principal—1 Daniel, Neg. Instr., sec. 86; Thomson on Bills (2d ed.), 393; Story on Prom. Notes, sec. 420, *et seq.*; *Devore v. Mundy*, 2 Strob. L. (S. C.) 15."

JUDICIAL ROBES.—The New York *Tribune* says editorially: "The United States Supreme Court and the New York Court of Appeals have long used the black silk robe as a costume for the bench. With the establishment of the Appellate Divisions of the Supreme Court in this State the justices in the First Department adopted the robe, and there has been a growing sentiment in favor of its adoption by the other divisions. The subject, however, is never discussed but that some persons, who confuse equality with bad manners and think democracy incompatible with form and distinction, talk loudly about the inherent dignity of man which cannot be improved by adventitious aids. They tell us that a robe does not make a bad man a good judge or the lack of it make a good judge less

able or honest. The people, we are told, do not like exclusiveness, and it is offensive to those who elect and pay the salaries of judges to see them hold themselves apart.

"It is perfectly true that the robe does not make the judge, and that judicial dignity has been preserved in frock coats, and even in business suits. It is also true that the robe is an adventitious aid to the decorum of a court-room. But a surplice is an adventitious aid to the impressiveness of a church service, and a coat is an adventitious aid to the dignity of a man who is equally respectable and virtuous in his shirt sleeves. All ceremonies are conventional and in a sense undemocratic. It is conventional for a lawyer to say, 'Your honor knows,' instead of, 'You see, old man,' and possibly a judge who listened to the more familiar argument might render able and impartial decisions, but would the court which he conducted command the respect which it should have in the community?

"Familiarity does breed contempt, and perfect republican equality is not incompatible with such distance and reserve as make a court of justice a place where conventionality gives some stimulus to the sense of reverence for the institution intrusted with the most sacred of secular functions. Perhaps that stimulus is more needed in a democracy than elsewhere, because other institutions tend to deaden reverence; and anything within reasonable bounds, like a gown, a crier, a form of address, an impressive room, which tends to make of the courts to men's minds something apart from the ordinary public office is to be commended."

Commenting upon the foregoing, the *New York Law Journal* adds:

"It is a good thing that the fanatical spirit of democracy, to which our contemporary refers, never extended far enough to prevail upon the Supreme Court of the United States to discard the judicial uniform which its members assumed at the beginning. The probable explanation is that, through John Marshall and his Federalist associates, the Federalist sentiment of the tribunal was perpetuated long after popular sentiment had been quite effectually 'Jeffersonized,' and after the passing of the 'Federalist' spirit from our highest court, and in popular sentiment 'Jeffersonian simplicity' had degenerated into 'Jacksonian vulgarity,' the natural conservatism, extending even to external matters, of a traditional English court of justice preserved this conventional usage. With the return swing of the pendulum from ostentatious simplicity the law courts of the nation found our most august tribunal, still habited in decent insignia of office, as a model to be imitated in this respect as in more substantial matters. The courts of last resort of our own and some other States, one by one, have assumed the historical judicial robes. The Appellate Division of the Supreme Court in this department has followed such example, and we wish that not only the other Appellate Division, but also the various trial courts, would fall in with the custom.

"There is great inconsistency in the survival of 'Jacksonian' prejudice on this subject. If a judicial officer, after finishing his labors for the day, should appear on the golf links, clad in knickerbockers and other features of an 'outing' costume, the Jacksonians would be apt to be pleased. It would be said that the judge did not propose to carry any of the adventitious dignity of his office into private life. Out in the world he was a man, just like other men.

"Why does not the converse of this sentiment make it equally praiseworthy in

a judge to wear, when officiating, a costume identified with the court-room by a stronger—historically almost a sacred—conventionality? Could there be anything more conducive to the observance by a judge of Lord Bacon's maxim, that when he sits in place he is another man?

"Also, we do not think that anything external could conduce more to respect by the bar and the public for the office, as distinguished from the man, than the wearing of judicial robes. The article above quoted from the *Tribune* argues this matter very pointedly and conclusively. We wish merely to add something which we have said in the same connection before. Judicial robes would be of even more practical utility at trial terms and chambers than when worn by the members of appellate tribunals. It is in the courts of first instance, where witnesses are examined and conflicting versions of fact are sifted, that angry passions are most apt to rise. Here the actual necessity is the greatest of preserving decorous reverence for the court as an institution by conventional accessories."

WIT AND WISDOM OF CHIEF JUSTICE BLECKLEY.—The *American Lawyer* publishes in full an extremely interesting paper by Albert H. Russell, of the Augusta (Ga.) Bar, in which a large number of extracts are given from the opinions of ex-Chief Justice Bleckley, of the Supreme Court of Georgia. We select a few of the most striking:

"To be too drunk to form the intent to kill, he must be too drunk to form the intent to shoot."—*Marshall v. State*, 59 Ga. 156.

"There are so many Hawks in the facts of this case that the air is a little darkened. Only two of them need fix our attention; these are George F. and Warren."—*Hawks v. Hawks*, 64 Ga. 241.

"The name of the young Mr. Peabody has had quite a struggle to get a correct standing on the record and retain it. I do not profess to be altogether certain, even now, of the precise name which he bears; but the land is his."—*Murphy v. Peabody*, 63 Ga. 526.

"According to the charges of the bill, the father had no capital, and the son no character. The man without character carried on business in the name, and upon the credit, of the man without capital."—*Nussbaum v. Heilbron*, 63 Ga. 315.

"This is an unsightly literary blemish, but not a grave legal infirmity. In school the composition would not pass, but it may be tolerated in the court-house. The meaning is clear, though the verbal inaccuracy is glaring."—*Dickson v. State*, 62 Ga. 589.

"Surely the sheriff is bound to know some law. He says he took the advice of counsel. We suppose from the quality of the advice that he must have obtained it gratis."—*Treadwell v. Beauchamp*, 82 Ga. 738.

"After the State has yielded to the federal army, it can very well afford to yield to the federal judiciary. Our sister States, Alabama and Louisiana, have done so."—*Wrought Iron Co. v. Johnson*, 84 Ga. 759.

"The brother was not sworn as a witness, but the sisters both testified, and, for women, they swore hard. One of them must have been in deep error, for they disagreed widely."—*Nixon v. Pollok*, 55 Ga. 321.

"A locomotive and a mule will pass over the same ground, so that they pass at

different moments of time. If, however, they contend for the same place at the same instant, and a collision ensues, with damage to either, the diligence of their respective owners may be challenged and compared."—*Georgia Railroad Co. v. Neely*, 56 Ga. 542.

"For my own part, judicial candor obliges me to say that I do not know whether the main staple of Judge Wright's charge in the present case, about scheming, planning and furnishing brain-work, is good law or not. I am not sufficiently master of the subject to overrule him, and yet I secretly wish he would not charge the like again. It is some little relief to my perplexity to find the charge is unguarded in that part of it which refers to the prisoner as possibly instructing another when and how to steal."—*Minor v. State*, 633.

"The writer of this opinion knows from personal experience that an invalid may be able to ramble among the mountains and fish a little for speckled trout without being fit for business in the court-house. The other members of the court are weak in the faith, and seem loath to recognize a state of health so ambiguous."—*Brunby v. Barnard*, 60 Ga. 294.

"Mere evidence is food unassimilated; a verdict or finding is the tissue into which it is converted by assimilation."—*Schley v. Schofield*, 61 Ga. 531.

"The decree went against him; and by him all who hold, or may hold under him thereafter, were represented. In him they fell. He, their head, was condemned, and they in him were condemned also. He was the Adam of their race. They are lost."—*Gunn v. Wades*, 62 Ga. 22.

"In the house hog bones, in the garden hog hair, hog entrails, hog meat buried in the earth, refusal of the occupant of the premises to permit a search without legal warrant, his abrupt departure from home whilst the warrant was being procured, his flight or retreat to a point more than fifty miles distant, and his continuous absence until arrested and brought back for trial, are strongly suggestive of a suspicious intercourse on his part with some hog or other. The jury were of opinion that it was the hog described in the indictment; and as he was a near neighbor of that hog, and as it disappeared about that time and its owner went in search of it as a stolen hog, and as the hair and the meat found buried in the garden looked like the hair and meat of that hog, it is highly probable that the jury were not mistaken."—*Stevens v. State*, 77 Ga. 311.

"The legal unity of husband and wife has, in Georgia, for most purposes, been dissolved, and a legal duality established. A wife is a wife and not a husband as she was formerly. Legislative chemistry has analyzed the conjugal unit, and it is no longer treated as an element but as a compound. A husband can make a gift to his own wife, although she lives in the house with him and attends to her household duties, as easily as he can make a present to his neighbor's wife. This puts her on an equality with other ladies, and looks like progress. Under the new order of things, when he induces her to enter into the business of keeping boarders, and promises to let her have all the proceeds, he is allowed to keep his promise if she keeps the boarders. It would seem that the law ought to tolerate him in being faithful to his word in such a matter, even though he has pledged it only to his wife, and we think it does."—*McNaught v. Anderson*, 78 Ga. 503.

"In a justice court, local government is realized in its last analysis. This tribunal is our primary—most rudimentary organ of home rule. It is the *ne plus*

ultra of judicial simplicity. An action in it is not by petition or declaration, but by summons; and the summons may be a very scanty document. It seems designed merely to put the defendant in that state of mind in which a man a little roused and irritated exclaims, 'What's the matter? what's up? what's to pay?' Practically, as experience teaches, when curiosity is thus excited, both memory and inquiry become active, and it is not long until the surprised individual knows clearly and definitely 'what it's all about.'—*Atlanta, &c. R. R. v. Hudson*, 62 Ga. 683.

"In the ornithology of litigation this case is a tomtit, furnished with a garb of feathers ample enough for a turkey. Measured by the verdict, its tiny body has only the bulk of twenty-five dollars, but it struts with a display of record expanded into eighty-three pages of manuscript. It seems to us that a more contracted plumage might serve for so small a bird, but perhaps we are mistaken. In every forensic season, we have a considerable flock of such cases, to be stripped and dissected for the cabinets of jurisprudence. We endeavor to pick our over-fledged poultry with judicial assiduity and patience."—*Lukens v. Ford*, 87 Ga. 542.

"This case presents a contest over cattle and turpentine. The herdsman makes a stand against the aggressions of the manufacturer. The man whose vocation it is to turn the herbage into beef rises up against the man who seeks to convert the trees into turpentine. The disputed element is fire. Fire is the friend and ally of him who seeks after turpentine, but the mortal enemy of him who rejoices in the possession of many cattle. The one ranges the forest with his brands of burning; the other, in alarm, cries fire! and clamors for its extinction by a court of equity. And equity, it seems, finds this a difficult business. It is wanting in hooks and ladders, engines and other appliances, and has no waterworks. How equity is to put out fire, or to prevent it from spreading, is more than we know without some thoughtful consideration. The complainant, however, is in court with his application for aid by the writ of injunction; and that is a writ which has arrested many things, and may possibly arrest fire itself. Let us see."—*Harrell v. Hannum*, 56 Ga. 508.